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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT TACOMA**

10 ROY THAYER,

11 Plaintiff,

12 v.

13 LIFE INSURANCE COMPANY OF
14 NORTH AMERICA, a foreign corporation,
15 and IEH AUTO PARTS LLC and THE PEP
16 BOYS – MANNY, MOE & JACK OF
17 DELAWARE LLC,

Defendants.

Case No.

COMPLAINT FOR FAILURE TO PAY
LONG-TERM DISABILITY
INSURANCE PLAN BENEFITS,
DAMAGES, AND VIOLATION OF
THE EMPLOYMENT RETIREMENT
INCOME SECURITY ACT (ERISA)

18 COMES NOW Roy Thayer, and alleges and states as follows:

19 **I. PARTIES**

20 1. The Plaintiff, Roy Thayer, is currently a resident of the City of Tacoma,
21 County of Pierce, State of Washington. At times material to this claim, the Plaintiff
22 was an employee of The Pep Boys – Manny, Moe and Jack in Washington State,
23 predecessor-in-interest to The Pep Boys – Manny, Moe and Jack of Delaware LLC
24 (hereafter “Pep Boys”). As a Pep Boys employee, Plaintiff was eligible to purchase
25 long-term disability income insurance from Defendant Life Insurance Company of
26 North America (“LINA”), a subsidiary of New York Life Insurance Company (“New

COMPLAINT - 1

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1 York Life”), the successor-in-interest to Cigna Insurance Company (“Cigna”),
 2 pursuant to a group policy sponsored, provided, and paid for in part by Pep Boys
 3 and IEH Auto Parts LLC (“IEH Auto Parts”) for certain employees of Pep Boys and
 4 IEH Auto Parts.

5 2. Defendant LINA is a foreign corporation with a principal place of
 6 business believed to be at Two Liberty Place, 1601 Chestnut Street, Philadelphia,
 7 Pennsylvania 19192-2392. LINA was previously an affiliate of Cigna and is
 8 presently a subsidiary of New York Life. LINA is directly authorized by the
 9 Insurance Commissioner of the State of Washington to sell disability and life
 10 insurance policies in the State of Washington. Furthermore, Defendant LINA is the
 11 denominated plan administrator and claims fiduciary for a long-term disability
 12 benefit insurance plan made available to certain employees of Pep Boys, Plaintiff’s
 13 employer. Pep Boys sponsors the plan and is responsible for determining eligibility
 14 for purchase of this benefit, premium billing, and issuance of policies.

15 3. Defendants IEH Auto Parts and Pep Boys, upon information and
 16 belief, and according to summary plan documents and the insurance policy, *have*
 17 designated themselves as plan administrator of the Pep Boys long-term disability
 18 benefit plan sponsored, purchased, and sold to eligible employees of Pep Boys.

19 **II. JURISDICTION**

20 4. This action is brought by Plaintiff to recover benefits due him under
 21 the terms of the long-term disability insurance plan (hereinafter referred to as
 22 “Plan”) sold by LINA to Pep Boys and established by IEH Auto Parts and Pep Boys
 23 under ERISA, 29 U.S.C. Section 1001, *et seq.*, to enforce Plaintiff’s right to benefits
 24 as authorized by the Plan, and to clarify his right to the amounts he is entitled to
 25 receive under said Plan.
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1 for disability benefits was approved and disability benefits were paid until August
2 26, 2020. Prior to August 26, 2020, on July 1, 2020, LINA denied ongoing long-
3 term disability benefits under the policy by claiming that Plaintiff was no longer able
4 to meet the definition of disability contained in the LINA policy. This determination
5 was made despite the fact that Plaintiff has a history of significant long-term
6 medical problems, including severe and often poorly controlled Type 2 diabetes
7 with neurological complications, along with related peripheral vascular disease. In
8 March of 2018, and subsequent to last working for his employer on February 27,
9 2018, Plaintiff suffered an acute diabetes-related bone infection in his right big toe
10 that did not respond to antibiotic treatment. In May of 2018, the infection led to the
11 amputation of both his fourth and fifth toes. During the spring and summer of 2018,
12 following a further diagnosis of peripheral artery disease in his right leg, Mr. Thayer
13 was repeatedly hospitalized and had bypass surgeries performed on the arteries in
14 his right leg. Despite weeks of wound care, the surgical wounds failed to heal and
15 became seriously infected. Additionally, Plaintiff continued to suffer the symptoms
16 of ischemic claudication in his right leg. Throughout this entire period, he was in
17 severe and agonizing pain, receiving opiate medication on an ongoing basis. On
18 November 7, 2018, his right leg was amputated above the knee.

19 10. Since the amputation of his right leg, Plaintiff suffered and continues
20 to suffer chronic phantom pain and takes Percocet (oxycodone-acetaminophen),
21 an opiate-based pain medication, on a daily basis, as well as sixteen other
22 medications. Currently, Plaintiff has undergone bypass surgery in his left leg
23 because of the progress of peripheral vascular disease in that extremity and
24 claudication as well. It is highly likely that this medical condition will worsen and
25 result in the further amputation of his left leg.

1 11. In August of 2018, Plaintiff was granted Social Security disability
2 benefits based on an application for benefits that was filed in February of 2018. In
3 fact, the Social Security Administration (“SSA”) determined that the Plaintiff was
4 disabled as of February 27, 2018.

5 12. On February 25, 2021, Plaintiff filed a written appeal with LINA, and
6 over a period of approximately four months, filed additional supplemental materials
7 indicating that Plaintiff’s medical condition was continuing to deteriorate and
8 worsen, and indicating that there were no jobs for which the Plaintiff was
9 competitively able to perform considering the severity of his ongoing illness.
10 Despite overwhelming medical evidence to support such a contention, Defendant
11 LINA concluded that no additional disability benefits were payable on the claim to
12 Plaintiff.

13 13. At all times material herein, and prior to filing suit in this matter, the
14 Plaintiff has exhausted all of his administrative remedies authorized by the long-
15 term disability benefit Plan with LINA.

16 14. The Plaintiff maintains that he has been totally disabled and unable to
17 work since February 27, 2018 and, in any event, since August 26, 2020, and that
18 he has submitted proper proof of her disability to LINA and their claims
19 representatives. LINA, by the terms of its Plan with Pep Boys, claims that they
20 have full authority to decide and resolve all claims for long-term disability benefits,
21 to review such claims, and to determine claims appeals, and that they are in fact
22 acting as a plan fiduciary as defined by ERISA. The Plaintiff in this action
23 maintains that LINA has failed to discharge its duties as a plan fiduciary in violation
24 of 29 U.S.C. Sections 1004, 1132, 1133 and 1140, and that Plaintiff is thereby
25 entitled to the relief authorized by 29 U.S.C. Section 1132, which includes payment
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1 of benefits under the long-term disability benefits Plan sponsored by Pep Boys for
2 its employees.

3 15. Pep Boys, by the terms of its Plan, is denominated as the plan
4 administrator and, as such, it has failed to discharge its duties as plan administrator
5 in violation of 29 U.S.C. Sections 1104, 1132, 1133 and 1140, and Plaintiff is
6 thereby entitled to relief authorized by 29 U.S.C. Section 1132 against the plan
7 administrator as well in this matter.

8 16. The Plaintiff further maintains that both Defendants have failed to pay
9 benefits due him under the long-term disability benefits Plan and that the Plaintiff
10 has sustained damages as a result thereof, and is entitled to relief under 29 U.S.C.
11 Section 1132, including recovery of attorneys' fees and costs in prosecuting this
12 action for benefits, and that Plaintiff is further entitled to equitable relief and
13 remedies as authorized by 29 U.S.C. Section 1132.

14 17. As a separate claim in this matter, Plaintiff alleges that Defendants
15 have specifically violated 29 U.S.C. Section 1133 by continuing to receive offset
16 monies from the SSA despite the fact that Plaintiff has not been paid long-term
17 disability benefits pursuant to the Plan since August 26, 2020. As additional relief,
18 Plaintiff requests that the Court order and require LINA to conduct a full accounting
19 of the amount of benefits payable to Plaintiff since August of 2020, including, if
20 necessary, ordering the administrative record to be reopened to allow for discovery
21 and inquiry with respect to this aspect of Plaintiff's claim.

22 18. Plaintiff in this matter maintains that, in any event, he continues to
23 remain disabled and unable to work, and meets the definition of "disability" as set
24 forth in the LINA policy.

1 **IV. DE NOVO STANDARD OF REVIEW**

2 19. Pursuant to Washington Administrative Code Section 284-96-012 and
3 *Murray v. Anderson Bjornstad Kane Jacobs, Inc.*, Slip Copy, 2011 WL 617384, W.D.
4 Wash., February 10, 2011 (NO. C10-484 RSL), the Defendants' denial of Plaintiff's
5 claim for long-term disability benefits is subject to a *de novo* standard of review by this
6 Court.

7
8 WHEREFORE, Plaintiff prays for the following relief:

9 1. For an Order and Judgment of this Court requiring Defendant LINA to
10 pay long-term disability benefits to the Plaintiff as contemplated and authorized by
11 the Pep Boys' long-term disability benefits insurance Plan provided to Plaintiff by
12 LINA as an employee of Pep Boys;

13 2. That an Order and Judgment be entered requiring Defendant LINA to
14 pay long-term disability benefits to Plaintiff as contemplated and authorized by the
15 Pep Boys' long-term disability insurance Plan sold by LINA to Pep Boys and
16 administered by LINA as a plan fiduciary and claims fiduciary;

17 3. That Plaintiff be awarded prejudgment interest with respect to the
18 unpaid benefits due up and through the time of trial and/or other determination in
19 this matter that Plaintiff is entitled to said benefits;

20 4. That Plaintiff receive and be awarded statutory and reasonable
21 attorney's fees and costs as authorized by 29 U.S.C. Section 1132;

22 5. For equitable relief as authorized 29 U.S.C. Section 1132; and

23 6. For such other and further relief as the Court deems just and
24 appropriate in this matter.

1 DATED this 28th day of September, 2021.

2 LePLEY LAW FIRM

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4 /s/ Patrick H. LePley
5 Patrick H. LePley, WSBA #7071
6 Attorney for Plaintiff(s)
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